

## CSA Notice of Approval

### Amendments to National Instrument 21-101 *Marketplace Operation* and Changes to Companion Policy 21-101CP *Marketplace Operation*

June 18, 2020

#### Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are adopting amendments to:

- National Instrument 21-101 *Marketplace Operation* (**Instrument**)
- Form 21-101F1 *Information Statement - Exchange or Quotation and Trade Reporting System* (**Form 21-101F1**)
- Form 21-101F2 *Information Statement – Alternative Trading System* (**Form 21-101F2**)
- Form 21-101F3 *Quarterly Report of Marketplace Activities* (**Form 21-101F3**)
- Form 21-101F5 *Information Statement – Information Processor* (**Form 21-101F5**).

In connection with the above, the CSA is also making changes to Companion Policy 21-101CP to National Instrument 21-101 *Marketplace Operation* (**Companion Policy**).

The amendments to the Instrument, Form 21-101F1, Form 21-101F2, Form 21-101F3, Form 21-101F5 and the changes to the Companion Policy are together referred to as the **Amendments**. Form 21-101F1, Form 21-101F2, Form 21-101F3, and Form 21-101F5 are collectively referred to as the **Forms**. The Instrument, Forms and Companion Policy are collectively referred to as **NI 21-101**.

The purposes of the Amendments are described in the “Substance and Purpose” section below.

This Notice contains the following annexes:

- **Annex A** – Summary of Changes to NI 21-101 (against version currently-in-effect)
- **Annex B** – List of commenters
- **Annex C** – Summary of comments and CSA responses
- **Annex D** – Amendments to National Instrument 21-101 *Marketplace Operation* (including amendments to the Forms)
- **Annex E** – Changes to Companion Policy 21-101CP to National Instrument 21-101 *Marketplace Operation*

- **Annex F** – Blacklined Amendments to National Instrument 21-101 *Marketplace Operation* (showing the changes to the Instrument, Forms and Companion Policy)
- **Annex G** – Local Matters (published only in local jurisdictions where such additional information is relevant)

Provided all necessary ministerial approvals are obtained, the Amendments will come into force on **September 14, 2020**.

This Notice, including its annexes, is available on the websites of the CSA jurisdictions, including:

[www.albertasecurities.com](http://www.albertasecurities.com)  
[www.bcsc.bc.ca](http://www.bcsc.bc.ca)  
[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)  
[www.fcnb.ca](http://www.fcnb.ca)  
[www.lautorite.qc.ca](http://www.lautorite.qc.ca)  
[www.mbsecurities.ca](http://www.mbsecurities.ca)  
[nssc.novascotia.ca](http://nssc.novascotia.ca)  
[www.osc.gov.on.ca](http://www.osc.gov.on.ca)

## **Background**

The Instrument establishes the regulatory framework for marketplaces and information processors (**IPs**) that carry on business in the CSA jurisdictions. Together with the Forms, the Instrument requires, among other things, marketplaces and IPs to provide the CSA with comprehensive reporting of all aspects of their operations, both at the time the marketplace and the IP commence operations and anytime the marketplace and IP make changes to that information. The Instrument also requires marketplaces to report, on a quarterly basis, information about the trading activity on the marketplace during the previous quarter.

The Instrument also establishes requirements regarding the information technology systems used by marketplaces and IPs to support their operations, including developing and maintaining adequate internal controls and information technology general controls over critical systems, conducting capacity stress tests on such systems, developing and maintaining reasonable business continuity and disaster recovery plans, and conducting an independent review of these systems (**ISR**).

On April 18, 2019, the CSA published proposed amendments to NI 21-101 for public comment.

## **Substance and Purpose**

The primary purpose of the Amendments is to reduce the regulatory burden associated with the reporting requirements for marketplaces and IPs in NI 21-101. The Amendments will, in our view, streamline these requirements by eliminating duplicative reporting as well as reporting that does not materially contribute to the CSA's oversight of marketplaces and IPs while maintaining a robust reporting framework that supports the objectives of the CSA's oversight, including providing protection to investors and fostering fair and efficient capital markets and investor

confidence. The Amendments are also intended to enhance the requirements in relation to the IT systems maintained by marketplaces and IPs. The Amendments clarify testing and reporting requirements and introduce an appropriate focus on cyber resilience.

Specific purposes of the Proposed Amendments include:

- Streamlining reporting requirements in the Instrument and Forms by eliminating the need to report superfluous information and eliminating duplicative reporting requirements;
- Enhancing the systems-related requirements in Part 12 and Part 14 of the Instrument and related guidance in the Companion Policy by optimizing the reporting of material systems incidents by marketplaces and IPs, establishing requirements to promote the cyber resilience of marketplaces and IPs, and providing for consistency with recent changes to the systems requirements for clearing agencies in National Instrument 24-102 *Clearing Agency Requirements*;
- Making other non-substantive changes, corrections and clarifications to NI 21-101.

### **Summary of Comments Received by the CSA**

In response to the publication of the proposed amendments, we received submissions from five commenters. We have considered the comments received and thank all commenters for their thoughtful input on the proposed amendments. A list of commenters who submitted comment letters together with a summary of their comments and the CSA's responses to those comments is attached to this Notice at Annexes B and C respectively. Copies of the comment letters are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca)

### **Summary of Changes to the Instrument, Forms and Companion Policy**

Annex A to the Notice includes a summary of notable changes to the Instrument, Forms and Companion Policy, including changes made to the versions published for comment on April 18, 2019.

## Questions

Please direct any questions regarding this Notice or the Amendments to:

Christopher Byers  
Senior Legal Counsel, Market Regulation  
Ontario Securities Commission  
Tel: 416-593-2350  
Email: [cbyers@osc.gov.on.ca](mailto:cbyers@osc.gov.on.ca)

Ruxandra Smith  
Senior Accountant, Market Regulation  
Ontario Securities Commission  
Tel: 416-593-8322  
Email: [ruxsmith@osc.gov.on.ca](mailto:ruxsmith@osc.gov.on.ca)

Kortney Shapiro  
Legal Counsel, Market Regulation  
Ontario Securities Commission  
Tel: 416-593-2328  
Email: [kshapiro@osc.gov.on.ca](mailto:kshapiro@osc.gov.on.ca)

Serge Boisvert  
Senior Policy Advisor  
Exchanges and SRO Oversight  
Autorité des marchés financiers  
Tel: 514-395-0337, poste 4358  
Email: [serge.boisvert@lautorite.qc.ca](mailto:serge.boisvert@lautorite.qc.ca)

Maxime Lévesque  
Senior SRO Analyst  
Exchanges and SRO Oversight  
Autorité des marchés financiers  
Tel: 514-395-0337, poste 4324  
Email: [maxime.levesque@lautorite.qc.ca](mailto:maxime.levesque@lautorite.qc.ca)

Rina Jaswal  
Senior Legal Counsel  
Capital Markets Regulation Division  
British Columbia Securities Commission  
Tel: 604-899-6683  
Email: [RJaswal@bcsc.bc.ca](mailto:RJaswal@bcsc.bc.ca)

Lenworth Haye  
Senior Oversight Analyst, Market and SRO Oversight  
Capital Markets Regulation Division  
British Columbia Securities Commission  
Tel: 604-899-6668  
Email: [lhaye@bcsc.bc.ca](mailto:lhaye@bcsc.bc.ca)

Katrina Prokopy  
Senior Legal Counsel  
Alberta Securities Commission  
Tel: 403-297-7239  
Email: [Katrina.Prokopy@asc.ca](mailto:Katrina.Prokopy@asc.ca)

Jesse Ahlan  
Regulatory Analyst, Market Structure  
Alberta Securities Commission  
Tel: 403-297-2098  
Email: [Jesse.Ahlan@asc.ca](mailto:Jesse.Ahlan@asc.ca)

## ANNEX A

### SUMMARY OF CHANGES

The following briefly describes the changes and policy rationales for the key Amendments.

#### **Streamlining reporting requirements**

The requirement in paragraph 3.2(3)(a) of the Instrument for a marketplace to file non-significant amendments to the information set out in Form 21-101F1 or Form 21-101F2 has been changed to provide that the marketplace must file any such amendments on a quarterly basis rather than monthly. We expect that quarterly filings of non-significant changes to the information in Form 21-101F1 or Form 21-101F2 will alleviate a significant regulatory burden on marketplaces without compromising the effective oversight of marketplaces by the CSA.

Exhibits C, D and E to Form 21-101F1 and Form 21-101F2 have been streamlined to eliminate the requirements to report certain information in respect of a marketplace's organization, affiliates, and operations. We have eliminated the requirement to report historical employment information for partners, directors and officers of a marketplace, eliminated the requirement to file constating documents for affiliated entities of a marketplace, and consolidated the information a marketplace reports regarding its operations. We expect that the streamlining of these exhibits will materially reduce regulatory burden without compromising the CSA's oversight of marketplaces.

We have also streamlined the information required to be reported quarterly by marketplaces in Form 21-101F3 by eliminating duplicative and burdensome requirements for marketplaces to report systems-related information, including a summary of outages during the previous quarter, as well as requirements to report information on the implementation status of previously filed changes to operations. We have also eliminated all reporting requirements for equity marketplaces trading exchange-listed securities, as the Investment Industry Regulatory Organization of Canada (IIROC) presently collects this information from marketplaces.

We have lengthened the time period associated with the filing by marketplaces of amendments to the information in Exhibit L (Fees) to each of Form 21-101F1 and Form 21-101F2 to at least 15 business days before the marketplace implements a change to its fees. We expect that this change will result in a more reasonable opportunity for the CSA to review marketplace fee filings without imposing any undue burden on marketplaces proposing fee changes.

#### **Financial reporting**

New section 4.3 has been added to the Instrument to require recognized exchanges to file interim financial reports within 60 days of the end of the interim period. Currently, in certain CSA jurisdictions, specific financial reporting requirements for exchanges are included in the terms and conditions of the exchanges' recognition orders.

## **Systems requirements**

The concept of ‘cyber resilience’ has been added to subparagraph 12.1(a)(ii) and subparagraph 14.5(1)(a)(ii) of the Instrument as one of the information technology general controls that a marketplace or IP must develop and maintain. While cyber resilience should already be covered by an entity’s controls, the explicit addition of the concept in the Instrument is intended to be reflective of the increasing importance of ensuring that an entity has taken adequate steps to address cyber resilience.

The concept of “security breach” in relation to the notifications that must be provided by a marketplace and IP under paragraph 12.1(c), paragraph 12.1.1(b) and paragraph 14.5(e) has been broadened to “security incident”. The change extends the concept beyond actual breaches, as we are of the view that a material event may include one where a breach has not necessarily occurred. We have changed the Companion Policy to provide guidance on what constitutes a “security incident”, referencing guidance provided by the National Institute of Standards and Technology (U.S. Department of Commerce) (NIST)<sup>1</sup>.

We have added requirements in the Instrument under section 12.1 and section 12.1.1 that marketplaces keep records of any systems failures, malfunctions, delays or security incidents and identify whether they are material. In response to concerns raised by commenters and to avoid placing undue burden on marketplaces, we have not proceeded with additional related reporting requirements that were included in the proposed amendments to NI 21-101 published for comment. However, guidance included in the Companion Policy provides that the CSA may request additional information from marketplaces regarding systems failures, malfunctions, delays or security incidents.

We have also clarified the requirement at section 12.1.2 that marketplaces must annually engage a qualified party to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls that assess the marketplace’s compliance with paragraphs 12.1(a) and 12.1.1(a) of the Instrument. Section 12.1.2 replaces guidance previously set out in the Companion Policy on vulnerability assessments and is consistent with similar requirements being proposed for recognized clearing agencies in National Instrument 24-102 *Clearing Agency Requirements*.

## **Other changes**

Lastly, several non-substantive changes, corrections and clarifications have been made. By their nature, none of the non-substantive changes will have any impact on the application of NI 21-101 to marketplaces and IPs.

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<sup>1</sup> The NIST definition of “security incident” is available at <https://csrc.nist.gov/Glossary>.

The following table presents the changes to NI 21-101 as a result of the Amendments.

Provision	Subject	Description of Change
<b>National Instrument 21-101</b>		
<b>Sub. 3.2(2)</b>	Fee changes	Changes to Exhibit L must be filed 15 business days before implementing the change
<b>Para. 3.2(3)(a)</b>	Housekeeping changes	Housekeeping changes to Form 21-101F1 and Form 21-101F2 filed quarterly rather than monthly
<b>Sub. 3.2(6)</b>	Annual consolidated F1/F2	Unchanged information may be incorporated by reference into annual filing
<b>S. 4.3</b>	Financial reporting	Exchanges to file interim financial reports within 60 days of the end of each interim period
<b>Para. 12.1(a)</b>	IT controls	IT general controls must include controls relating to cyber resilience
<b>Para. 12.1(b)</b>	Capacity stress tests	Clarified requirement that stress testing must determine the processing capability of IT systems
<b>Para. 12.1(c)</b>	Notification of systems incidents	Marketplaces must provide prompt notification of material security incidents (for critical and auxiliary systems)
<b>Para. 12.1(d)</b>	Record-keeping for systems incidents	Marketplaces must keep records of any systems failure, malfunction, delay or security incident and identify whether it is material
<b>S. 12.1.2</b>	Vulnerability assessments	Marketplaces must engage a qualified party to perform a vulnerability assessment at least annually
<b>Sub. 12.2(1)</b>	Independent Systems Review (ISR)	Marketplace must engage a qualified external auditor to conduct an independent systems review
<b>Para. 12.2(2)(b)</b>	Reporting of ISR	Delivery of report to the CSA within 60 days of report completion (rather than calendar year end)
<b>Ss. 14.5 and 14.5.1</b>	System requirements for Information Processors (IPs)	Changes to systems requirements for IPs to conform to changes to requirements for marketplaces
<b>Form 21-101F1, Form 21-101F2 and Form 21-101F5</b>		
<b>Exhibits (general)</b>	Date of implementation of change	Date of implementation to reflect the actual or expected date of implementation
<b>Exhibit B</b>	Ownership of marketplace	<ul style="list-style-type: none"> <li>▪ Threshold for disclosure raised from 5% to 10%</li> <li>▪ Carve out for marketplaces that are reporting issuers</li> </ul>
<b>Exhibit C</b>	Organization of marketplace and IP	Streamlining of information to be provided to reduce burden and eliminate duplication
<b>Exhibit D</b>	Affiliates of marketplace	Streamlining of information to be provided to reduce burden and eliminate duplication
<b>Exhibit E</b>	Operations of marketplace	Streamlining of information to be provided to reduce burden and eliminate duplication
<b>Form 21-101F3</b>		



<b>Part A</b>	General marketplace information	Removal of requirements to report on previously filed amendments to F1 and F2
<b>Part A</b>	Systems-related reporting	Removal of requirements to report systems outages and changes
<b>Part B (Section 1)</b>	Equity marketplaces trading exchange-listed securities	All reporting requirements have been removed to alleviate regulatory burden, as IIROC currently collects much of this information
<b>Part B (Section 2)</b>	Fixed Income marketplaces	Reporting requirements for concentration of trading by marketplace participant (Chart 9) removed
<b>Companion Policy 21-101CP</b>		
<b>S. 6.2</b>	Financial reporting	Guidance on the form of financial reporting for marketplaces, including guidance on interim periods and accounting principles
<b>Sub. 7.8(1)</b>	Conflicts of interest	Clarification of guidance that the conflict of interest policies and procedures marketplaces are required to maintain should address actual, potential or perceived conflicts in respect of any involvement of partners, directors, officers, or employees of a marketplace's owners in the marketplace's operations
<b>Sub. 14.1(1)</b>	IT controls	Revised guidance on sources of guidance as to what may constitute adequate IT controls
<b>Sub. 14.1(2.1)</b>	Materiality of systems incidents	Additional guidance on what constitutes a material systems incident
<b>Sub. 14.1(2.2)</b>	Security incidents	Additional guidance on what constitutes a material security incident and the public disclosure of a security incident
<b>Sub. 14.1(2.3)</b>	Prompt notification of material systems incidents	Additional guidance on the requirement to promptly report material systems incidents
<b>Sub. 14.1(2.4)</b>	Record-keeping for systems incidents	Guidance on the CSA's expectations for record-keeping in relation to systems incidents
<b>Sub. 14.1(3)</b>	Independent Systems Reviews	Additional guidance regarding qualified external auditors and expectations regarding the form and substance of the ISR
<b>Sub. 14.1(3.1)</b>	Vulnerability assessments	Guidance regarding qualified parties performing the required assessments and testing